

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ESTATE OF JOSEPH VAZZANA, SR.,
JOSEPH VAZZANA, JR., and
APPROXIMATELY ONE ACRE OF LAND,
MORE OR LESS, LOCATED CONTIGUOUSLY
AT 51 CABOT AND 50 DALE STREETS, WEST
BABYLON, NEW YORK,

Defendants.

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CONSENT JUDGMENT

Civil Action

No.: CV-04-0620

(Wexler, J.)

(M. Orenstein, M.J.)

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Spectrum Finishing Corp. Superfund Site in West Babylon, Suffolk County, New York (the “Site”).

B. The defendants that have entered into this Consent Judgment do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information submitted by Settling Defendant Joseph Vazzana, Jr. to determine whether Settling Defendant Joseph Vazzana, Jr. is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant Joseph Vazzana Jr. is able to pay the amounts specified in Section VII.

D. Counsel for the Estate of Joseph Vazzana, Sr. may have a claim against the Estate for attorney fees in connection with the resolution of this matter. Counsel for the Estate believes that the Estate's sole assets may be comprised of four lots of property located at or near 50 Dale Street and 51 Cabot Street in the Village of West Babylon, Suffolk County, New York.

E. The United States and Settling Defendants agree, and this Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good

faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Judgment, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for purposes of this Consent Judgment, Settling Defendants waive all objections and defenses they may have to jurisdiction of this Court or venue in this District, and all defenses based on statute of limitations. Settling Defendants shall not challenge the terms of this Consent Judgment or this Court's jurisdiction to enter and enforce this Consent Judgment.

III. PARTIES BOUND

2. This Consent Judgment is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Judgment.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Judgment which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Judgment or in any appendix attached hereto, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. “Consent Judgment” shall mean this Consent Judgment and all appendices attached hereto. In the event of conflict between this Consent Judgment and any appendix, this Consent Judgment shall control.
- c. “Day” shall mean a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. “Fair Market Value” shall mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.
- h. “Financial Information” shall mean those financial documents identified in Appendix B.

i. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each calendar year.

j. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Defendants for the Transfer, with deduction for only the following costs associated with the completion of the Transfer, to the extent such costs are actually paid by Settling Defendants: (a) the real estate agent commission (not to exceed 6%); (b) any recording fees; (c) the reasonable cost of an appraisal(s) of the Property; (d) any transfer taxes required by local law; and (e) Settling Defendants' attorney fees not to exceed \$15,000.

k. "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper or lower case letter.

l. "Parties" shall mean the United States and the Settling Defendants.

m. "Plaintiff" shall mean the United States.

n. "Property" shall mean the parcel(s) located at 50 Dale Street/51 Cabot Street in the Hamlet of West Babylon, Suffolk County, New York, and described in the deed dated May 13, 1993, which is attached to this Consent Judgment at Appendix C.

o. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq., as amended by laws including the Resource Conservation and Recovery Act (collectively referred to as "RCRA"), and its implementing regulations.

p. “Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the date of the contract of sale of the Property pursuant to Section VI below, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

q. “Section” shall mean a portion of this Consent Judgment identified by a Roman numeral.

r. “Settling Defendants” shall mean Joseph Vazzana, Jr., and Estate of Joseph Vazzana, Jr., (for which Joseph Vazzana, Jr. serves as administrator).

s. “Site” shall mean the Spectrum Finishing Corp. Superfund Site, encompassing approximately one acre, located at 50 Dale Street/51 Cabot Street, in the Village of West Babylon, Suffolk County, New York, and generally shown on the map included at Appendix A.

t. “Transfer” shall mean sale, assignment, transfer or exchange by Settling Defendants (or their successors or heirs) of the Property with prior written approval of EPA, where title to the Property is transferred and its fair market value is received in consideration. “Transfer” does not include a transfer pursuant to an inheritance or a bequest.

u. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Judgment, the mutual objective of the Parties is for Settling Defendants to make cash payments to address their liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by

the United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

5. The following two payments shall be made to EPA:

a. Settling Defendant Joseph Vazzana, Jr. shall pay to EPA one thousand dollars (\$1,000.00), plus Interest accrued from the date of entry of this Consent Judgment to the date of payment. The payment shall be made in four equal installments of \$252.14 with the first payment due within ten days of the date of entry of this Consent Judgment and the remaining payments due in thirty day intervals thereafter. Each payment shall be made by cashier's check made payable to the U.S. Treasury, shall reference USAO File Number 2001V03099, EPA Site/Spill ID number 02-JQ, and shall be delivered to Assistant United States Attorney Kelly Horan at the address listed in Paragraph 43 below, by courier, or overnight delivery service.

b. At the time of Transfer, Settling Defendant Joseph Vazzana, Jr., as Administrator, shall cause Settling Defendant Estate of Joseph Vazzana, Sr. to pay the United States up to 100% of the Net Sales Proceeds in reimbursement of Response Costs, up to a total sum of \$1,100,000.00. The amount to be paid to the United States pursuant to the first sentence of this paragraph shall be determined subsequently by settlement, judgment or other action that addresses, to the extent appropriate, the claims filed in this action with respect to the Property. If the payment to the United States pursuant to the first sentence of this paragraph is less than \$1,100,000.00, then Settling Defendant Joseph Vazzana, Jr., as Administrator, shall cause Settling Defendant Estate of Joseph Vazzana, Sr. to pay the difference between the payment made pursuant to the first sentence of this paragraph and \$1,100,000.00, unless otherwise agreed

to in writing between Settling Defendant Estate and the United States.

6. The payment required by Paragraph 5.b., above, shall be made by certified or cashier's check made payable to "United States of America," referencing the name and address of the party making payment, the EPA Region and Site Spill ID Number 02-JQ and DOJ Case Number 90-11-3-07461. Settling Defendants shall present the check to an authorized representative of EPA who will be present at the time of the Transfer.

7. All amounts to be paid by Settling Defendants pursuant to this Section VI shall be deposited in the EPA Hazardous Substance Superfund.

8. Settling Defendants shall neither attempt to, nor actually sell, assign, convey, exchange, bequeath or otherwise encumber the Property in any way except by means of a Transfer, as defined herein.

9. Settling Defendants hereby certify that:

a. Joseph Vazzana, Sr., at the time of his death, was the sole owner, in fee simple, of the Property, thereby making the Property part of the Estate; and

b. The Property is free and clear of all liens and encumbrances other than those for real property taxes disclosed by Settling Defendants to Plaintiff, a mortgage held by the District Attorney for the County of Suffolk, and the lien filed by EPA for response costs. The parties acknowledge that monetary claims have been filed in this action with respect to the Property by the New York State Department of Environmental Conservation and the County of Suffolk. Further, the parties acknowledge that additional claims may be forthcoming in this action with respect to the Property. This Consent Judgment does not address the relative priority

of any liens and/or encumbrances which may exist upon the Property.

10. Pursuant to a method and schedule to be subsequently determined by settlement, judgment or other action that addresses, to the extent appropriate, the claims filed in this action with respect to the Property, Settling Defendants shall use their best efforts to Transfer the Property.

11. Commencing on the date that this Consent Judgment is lodged with the district court, Settling Defendants shall not mortgage or otherwise encumber the Property unless given written permission to do so by EPA after providing to EPA any requested information regarding the mortgage or other encumbrances.

12. In the event of a Transfer of the Property, Settling Defendants shall continue to be bound by all the terms and conditions of this Consent Judgment.

VII. FAILURE TO COMPLY WITH CONSENT JUDGMENT

13. Interest on Late Payments If Settling Defendants fail to make any payment under Section VI by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. Stipulated Penalty

a. If Settling Defendants fail to comply with any part of Section VI (Payment of Response Costs), Settling Defendants shall be in violation of this Consent Judgment and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$1,500.00 per violation per day of such non-compliance.

b. If Settling Defendants do not comply with Section XIII (Access and

Institutional Controls), Section XIV(Access to Information) or Section XV (Retention of Records) Settling Defendants shall be in violation of this Consent Judgment and shall pay to EPA, as a stipulated penalty, \$750.00 per violation per day for the first fourteen (14) days of such noncompliance and \$1,500.00 per day thereafter.

c. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “Stipulated Penalties” and shall be made by cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, and any letter accompanying the check, shall reference the name and address of the Settling Defendants, the Site name (Spectrum Finishing Corp. Site), the EPA Region 2 and Site Spill ID Number 02-JQ, DOJ Case Number 90-11-3-07461, and the civil action number CV-04-0620 (E.D.N.Y.), USAO File Number 2001V03099. Settling Defendants shall send the check (and any accompanying letter) to:

EPA Region 2
Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 02-JQ, DOJ Case Number 90-11-3-07461, and the civil action number CV-04-0620 (E.D.N.Y.), USAO File Number 2001V03099.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be

paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

15. If the United States brings an action to enforce this Consent Judgment, Settling Defendants shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

16. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Judgment.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Judgment. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Judgment.

VIII. RELEASE OF FEDERAL LIEN

18. Upon EPA's receipt of all payments required by Paragraph 5.b., above, EPA shall deliver to Settling Defendants a Notice of Release of Federal Lien ("Notice"). The Notice shall release the federal lien filed on May 24, 2001 at Liber D00012120, Page 345, in the Office of the Suffolk County Clerk, Suffolk County, State of New York, but shall not release any other lien or encumbrance which may exist upon the Property.

IX. COVENANT NOT TO SUE BY PLAINTIFF

19. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Judgment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Judgment. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

20. The United States reserves, and this Consent Judgment is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 19 of this Consent Judgment. Notwithstanding any other provision of this Consent Judgment, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Judgment;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for injunctive relief or administrative order enforcement under Section

106 of CERCLA, 42 U.S.C. § 9606;

e. liability for costs incurred or to be incurred by the United States that do not fall within the definition of Response Costs.

f. liability based upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after Settling Defendants' signature of this Consent Judgment; and

g. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Consent Judgment, EPA reserves, and this Consent Judgment is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Judgment, if the financial certification made by Settling Defendant Joseph Vazzana, Jr. in Paragraph 39, below, is false or, in any material respect, inaccurate.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

22. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Judgment, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

23. Nothing in this Consent Judgment shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

25. The waiver in the preceding Paragraph shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any

person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraph 25, nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. Except as provided in Paragraph 25, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence

relating in any way to the Site against any person not a Party hereto.

27. The Parties agree, and by entering this Consent Judgment this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Judgment, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Judgment. The “matters addressed” in this Consent Judgment are Response Costs.

28. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Judgment, they will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Judgment, they will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon them. In addition, Settling Defendants shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Judgment.

29. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing

in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

XIII. ACCESS AND INSTITUTIONAL CONTROLS

30. a. Settling Defendants shall provide the United States, New York State, and their representatives, including EPA and their contractors, with access at all reasonable times to the Property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- i. Monitoring, investigation, removal, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIV (Access to Information); and
- vii. Assessing Settling Defendants' compliance with this Consent Judgment.

b. Commencing on the date of lodging of this Consent Judgment, Settling

Defendants shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the removal or remedial measures performed or to be performed at the Site or adversely affect the value of the Property; and

c. If EPA so requests, Settling Defendants shall execute and record in the Records Office of the County Clerk, Suffolk County, State of New York, an easement, running with the land, that (i) grants a right of access for the purpose of conducting response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions listed in subparagraph 30(b) of this Consent Judgment, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures performed or to be performed at the Site. Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following grantees as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State of New York and its representatives, (iii) and/or other appropriate grantees designated in writing by EPA. Settling Defendants shall, within forty-five (45) days of EPA's request, submit to EPA for review and approval with respect to the Property:

i. a draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. A current title commitment or report prepared in accordance with the

U.S. Department of Justice Title Standards 2001: A guide for the preparation of title evidence in land acquisitions by the United States of America (the “Standards”). Within fifteen (15) days of EPA’s approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Office of the County Clerk, Suffolk County, New York. Within thirty (30) days of recording the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk’s recording stamps.

31. Notwithstanding any provision of this Consent Judgment, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

32. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as “records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Judgment, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, real estate appraisals, marketing analyses, listing agreements, closing documents or any other documents or information related to the Site.

33. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Judgment to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, and affiliation (e.g. company or firm) of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other

settlement with the United States shall be withheld on the grounds that they are privileged.

34. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

35. Until seven (7) years after the final Transfer of the Property, Settling Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site, the implementation of this Consent Judgment, or the liability of any person under CERCLA with respect to the Site, regardless of any retention policy to the contrary.

36. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, and affiliation (e.g. company or firm) of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any

such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

37. Each Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to the Site or their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site. Settling Defendant Joseph Vazzana, Jr. further certifies that he has:

a. fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant Joseph Vazzana, Jr. executed this Consent Judgment.

XVI. NOTICES AND SUBMISSIONS

38. Unless otherwise provided herein, notifications and submissions to or communications with EPA or the U.S. Attorney's Office, Eastern District of New York and DOJ shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

39. All notices, submissions, or communications in connection with this Stipulation shall be directed to the individuals at the addresses specified below:

As to the United States:

Kelly C. Horan
Assistant U.S. Attorney
U.S. Attorney's Office
Eastern District of New York
One Pierrepont Plaza, 14th Floor
Brooklyn, New York 11201
USAO 2001V03099

As to DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044-7611
DOJ 90-11-3-07461

As to EPA:

Elizabeth Leilani Davis
Office of Regional Counsel
United States Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

As to Settling Defendants:

Thomas Keegan, Esq.
Keegan & Keegan, Ross & Rosner, LLP
147 North Ocean Avenue
Patchogue, New York 11772

Joseph Vazzana, Jr.
91 Moriches Road

Mastic, New York 11950

XVII. RETENTION OF JURISDICTION

40. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Judgment.

XVIII. INTEGRATION/APPENDICES

41. This Consent Judgment and its appendices constitute the final, complete and exclusive Consent Judgment and understanding between the Parties with respect to the settlement embodied in this Consent Judgment. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Judgment. The United States and Settling Defendants may only modify this Consent Judgment in writing. The following appendices are attached to and incorporated into this Consent Judgment:

“Appendix A” is the map of the Site;

“Appendix B” is a list of the financial documents concerning Settling Defendant Joseph Vazzana, Jr.;

“Appendix C” is the deed, dated May 13, 1993, that transferred sole ownership of the Site to Joseph Vazzana, Sr.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

42. This Consent Judgment shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or

considerations which indicate that this Consent Judgment is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Judgment without further notice.

43. If for any reason this Court should decline to approve this Consent Judgment in the form presented, this Consent Judgment is voidable at the sole discretion of any Party and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

44. Each undersigned representative of a Settling Defendant to this Consent Judgment and the undersigned representative of the Environmental Enforcement Section for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment and to execute and bind legally such Party to this document.

45. Settling Defendants hereby agree not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Consent Judgment, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Judgment.

46. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Judgment. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XXI. FINAL JUDGMENT

47. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute the final judgment between the United States and Settling Defendants for matters addressed. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v.
Estate of Joseph Vazzana, Sr., et ano., relating to the Spectrum Finishing Corp. Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York

By: _____
KELLY HORAN
Assistant United States Attorney
One Pierrepont Plaza
Brooklyn, NY 11201
(718) 254-6007

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of U.S. v. Estate of Joseph Vazzana, Sr., et al., relating to the Spectrum Finishing Corp. Superfund Site.

Date: _____

GEORGE PAVLOU
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v. Estate of Joseph Vazzana, Sr., et al., relating to the Spectrum Finishing Corp. Superfund Site.

FOR DEFENDANT

Date: _____
ESTATE OF JOSEPH VAZZANA, SR.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

FOR DEFENDANT

Date: _____
JOSEPH VAZZANA, JR.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

SO ORDERED THIS ____ DAY OF _____, 200__.

United States District Judge